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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/491,779

01/26/2000

Michael Gauselmann

ADP231

9043

7590  
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Warren, NJ 07059

06/28/2010

EXAMINER

DUFFY, DAVID W

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

06/28/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/491,779	<b>Applicant(s)</b> GAUSELMANN, MICHAEL	
	<b>Examiner</b> DAVID DUFFY	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 13-18, 24, 27-45, 49, 54 and 60-93 is/are pending in the application.
- 4a) Of the above claim(s) 1-9, 13-18, 24, 27-45, 49, 54 and 60-81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 82-93 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of group III in the reply filed on 04/08/2010 is acknowledged.
2. The traversal is on the ground(s) that group I and II can potentially overlap. Applicant is persuasive that groups I and II are related; however, the claims of groups I and II are directed to a nonelected species of group III.
3. The traversal of the restriction between groups I and III is not persuasive because the groups are drawn to distinct species from what applicant has elected. The species are not capable of operating together and do not overlap in scope.
4. The traversal of the restriction between groups II and III is not persuasive because the groups are drawn to distinct species from what applicant has elected. The species are not capable of operating together and do not overlap in scope.
5. The traversal of the restriction between groups I and IV is on the grounds that invention IV is directed to a system that cannot be used to run other materially different processes. This is not found persuasive because group IV is directed to a gaming machine that does not include any of the game aspects of group I. Invention IV is a general purpose gaming machine that would be capable of operating other methods.
6. The traversal of the restriction between groups I and V is on the grounds that "The inventions are directed to a single entertainment automat and to a plurality of entertainment automats." This is not persuasive because group V is directed to a

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general purpose method of determining a master device in a network and does not recite or tie to the game disclosed in group I.

7. The traversal of the restriction of groups II and III is similar to groups I and II and is not persuasive on similar grounds.

8. The traversal of the restriction of groups II and IV, II and V, III and IV, and III and V are similar to groups I and IV and is not persuasive on similar grounds.

The requirement is still deemed proper and is therefore made FINAL.

9. Applicant's election without traverse of the species directed to a networked progressive symbol game under control of a master and duration determined by count of games in the reply filed on 04/08/2010 is acknowledged.

10. Claims 82-93 are drawn to the elected group and species. Claims 1-9, 13-18, 24, 27-45, 49, 54, and 60-81 are hereby withdrawn as being drawn to a nonelected invention or species.

***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. Claims 82-93 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 13-18, 78-79 and 82-93 all contain claim limitations that describe parts

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of a flow chart as though they were physical objects that have signals passing to them to carry out functions. There is no disclosure that the elements of these flow charts are actual physical objects that would operate in a manner as set forth by the claims.

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claims 82-93 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

15. Claims 82-93 include limitations that attempt to define portions of a flow chart as a physical item that may accept and process signals. It is unclear how an abstract concept such as a step in a flow chart would be capable of carrying out any process, much less the process claimed.

### ***Claim Rejections - 35 USC § 101***

16. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

17. Claims 82-91 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In order to be considered patent eligible under 35 USC 101, a claimed process must contain a sufficient tie to a machine, article of manufacture or a composition of matter. *In re Comiskey*, 84 USPQ2d 1670 (Fed. Cir. 2007). In this case, the claimed invention does not have a sufficient tie to any machine, article of manufacture or a composition of matter. The claims set forth a series of

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abstract flow chart blocks as though they were physical structures, for which the disclosure does not provide support. Accordingly, examiner interprets the flow chart to be software implemented and the claims do not set forth a positive tie to a specific machine or apparatus.

### ***Response to Arguments***

18. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID DUFFY whose telephone number is (571)272-1574. The examiner can normally be reached on M-F 0830-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. D./

Examiner, Art Unit 3714

/Peter D. Vo/

Supervisory Patent Examiner, Art Unit 3714